



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	06/07/12	Bill No:	Assembly Bill 2453
Tax Program:	Sales and Use Special Taxes and Fees Timber Yield	Author:	Block and Harkey
Sponsor:	BOE	Code Sections:	See page 2
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This Board of Equalization (BOE)-sponsored bill extends the limitation period for filing a petition for redetermination from 30 days to 60 days from the date that the notice of determination was mailed to the taxpayer against whom the notice was issued.

Summary of Amendments

Since the previous analysis, this bill was amended to add a coauthor.

ANALYSIS

CURRENT LAW

Under the existing Revenue and Taxation Code Sections 6561 (Sales and Use Tax Law), 7710 (Motor Vehicle Fuel Tax Law), 8851 (Use Fuel Tax Law), 12428 (Tax on Insurers Law), 30261 (Cigarette and Tobacco Products Tax Law), 32301 (Alcoholic Beverage Tax Law), 38441 (Timber Yield Tax Law), 40091 (Energy Resources Surcharge Law), 41085 (Emergency Telephone Users Surcharge Law), 43301 (Hazardous Substances Tax Law), 45301 (Integrated Waste Management Fee Law), 46351 (Oil Spill Response, Prevention, and Administration Fees Law), 50114 (Underground Storage Tank Maintenance Fee Law), 55081 (Fee Collection Procedures Law), and 60350 (Diesel Fuel Tax Law), any person, supplier, distributor, insurer, surplus line broker, user, taxpayer, or feepayer (all together, taxpayer) against whom a notice of determination or notice of deficiency assessment has been issued may file a petition for redetermination requesting that the BOE reconsider the notice of determination or notice of deficiency assessment, if the taxpayer disagrees with any item included in the notice of determination or notice of deficiency assessment.

Under existing law, a petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the taxpayer against whom the notice was issued. If a petition for redetermination is not filed within the 30-day period, the determination becomes final and due and payable.

If the taxpayer misses the filing deadline, the only way provided by statute for the taxpayer to appeal the liability assessed is to pay the tax or fee in full and file a claim for refund. However, the BOE may, at its discretion, accept an untimely (late) petition as an “administrative protest.”¹

In addition, existing law provides that a petition for redetermination may be amended to state additional grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered at any time prior to the date on which the BOE issues its order or decision upon the petition for redetermination.

The BOE Rules for Tax Appeals govern petitions and hearing procedures for all of the tax and fee programs administered by the BOE. Regulation 5212 provides guidance as to what constitutes a valid petition. It requires that every petition for redetermination must:

1. Be in writing.
2. Identify the amounts the petitioner wishes to contest (petitioners may contest all or a portion of the amount shown on a notice), if known.
3. State the specific grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered.
4. Be signed by the petitioner or the petitioner’s authorized representative.

Regulation 5212 also provides that the filing of a completed BOE form (BOE-416, *Petition for Redetermination*) for use as a petition for redetermination will satisfy the above requirements for filing of a petition for redetermination. A petitioner may also submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

The filing of a timely petition for redetermination will stay collection activities, with regard to amounts contained in the notice of determination or notice of deficiency assessment being petitioned, until after the petition has been acted upon and the action becomes final. However, filing a timely petition will not stop the accrual of interest, which continues to accrue until the tax or fee liability is paid in full.

Finally, Regulation 5220 provides guidance on the treatment of an untimely (late) petition for redetermination as an administrative protest. If a petition for redetermination is filed after the expiration of the 30-day period, the untimely petition may be treated as an administrative protest when determined by the Deputy Director of the Department that issued the petitioned notice. If an untimely petition for redetermination is treated as an administrative protest, it will be reviewed in the same manner as a timely petition for redetermination. Significant exceptions are, however, that activities to collect the tax or fee, interest, and penalty might not be delayed, and the taxpayer will not have an absolute right to an appeals conference or oral hearing before the BOE (although a request for an appeals conference or BOE hearing will be liberally granted).

¹ An appeal filed after the 30-day filing deadline is not a valid petition. However, if the Deputy Director of the Department accepts that invalid petition into the appeals process, the appeal is called an administrative protest (formerly referred to as a “late protest”).

PROPOSED LAW

This bill would amend Revenue and Taxation Code Sections 6561 (Sales and Use Tax Law), 7710 (Motor Vehicle Fuel Tax Law), 8851 (Use Fuel Tax Law), 12428 (Tax on Insurers Law), 30261 (Cigarette and Tobacco Products Tax Law), 32301 (Alcoholic Beverage Tax Law), 38441 (Timber Yield Tax Law), 40091 (Energy Resources Surcharge Law), 41085 (Emergency Telephone Users Surcharge Law), 43301 (Hazardous Substances Tax Law), 45301 (Integrated Waste Management Fee Law), 46351 (Oil Spill Response, Prevention, and Administration Fees Law), 50114 (Underground Storage Tank Maintenance Fee Law), 55081 (Fee Collection Procedures Law), and 60350 (Diesel Fuel Tax Law) to extend the limitation period for filing a petition for redetermination from 30 days to 60 days from the date that the notice of determination or notice of deficiency assessment was mailed to the taxpayer against which the notice was issued.

This bill would also make corresponding changes to Sections 6562 (Sales and Use Tax Law), 7711 (Motor Vehicle Fuel Tax Law), 8852 (Use Fuel Tax Law), 30262 (Cigarette and Tobacco Products Tax Law), 32302 (Alcoholic Beverage Tax Law), 38443 (Timber Yield Tax Law), 40093 (Energy Resources Surcharge Law), 41087 (Emergency Telephone Users Surcharge Law), 43303 (Hazardous Substances Tax Law), 45303 (Integrated Waste Management Fee Law), 46353 (Oil Spill Response, Prevention, and Administration Fees Law), 55083 (Fee Collection Procedures Law), and 60352 (Diesel Fuel Tax Law).

These provisions would become operative on January 1, 2013.

BACKGROUND

Taxpayers most often file petitions as the result of a BOE field audit or investigation. If the BOE determines that a taxpayer has underpaid its taxes or fees, a billing is issued called a Notice of Determination (for most tax programs) or a Notice of Deficiency Assessment.

However, before a determination is issued, the taxpayer is informed of the 30-day deadline on filing a petition. Beginning with an exit conference with the taxpayer and/or the taxpayer's representative, the auditor explains the audit procedures used and any additional taxes or fees due. The auditor is required to provide the taxpayer with a copy of all the audit working papers. If the taxpayer disagrees with the audit results, the auditor will generally defer preparing the final audit report to allow the taxpayer a reasonable amount of time to provide additional information to support its arguments. During the exit conference, the auditor also explains the steps involved in filing a timely petition. In addition, the auditor provides the taxpayer with a copy of BOE Publication 17, *Appeals Procedures Sales and Use Taxes and Special Taxes*, which more fully explains the appeals process.

Once the auditor has considered the taxpayer's reasons and documentation, the auditor may (1) request additional information or (2) arrange a conference with the auditor's supervisor. The audit supervisor decides what further action should be taken to resolve the disagreement. Following this meeting, the auditor prepares a Report of Field Audit or Report of Investigation which summarizes the final audit findings. The taxpayer is then sent a letter that gives the taxpayer an additional 10 days to make an appointment with a BOE representative. As with the meeting with the audit supervisor, the BOE representative reviews the audit to determine if any additional adjustments are warranted. This is the last discussion that takes place with the taxpayer before a determination is issued.

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The notice of determination, again, informs the taxpayer that it has 30 days from the date shown on the face of the notice to file a petition. Further, the notice states that the petition must be in writing and must state the specific grounds upon which it is founded.

In spite of the BOE's verbal communications, correspondence, and publications instructing taxpayers to file a petition within the 30-day deadline, taxpayers still fail to do so. Some taxpayers have expressed that the 30-day period does not allow them ample time to prepare their petition. Even though the petition may be in the form of a simple letter or a taxpayer may use BOE-416 form, *Petition for Redetermination*, the BOE's instructions state that the petition must include a description of the protested item(s) and the specific reasons for disagreeing with the auditor's findings. In filing a petition, taxpayers may wish to review the audit work papers. Some inquiries the taxpayer may wish to pursue include: Did the auditor leave out certain facts that were presented? Did the auditor make an adjustment for bad debts or returned merchandise? In the case of a taxpayer that owns and operates a bar, did the auditor make a sufficient allowance for self-consumed alcoholic beverages? In cases where a taxpayer failed to maintain adequate records, the taxpayer may want to consider other types of documents or information to substantiate his or her position. While taxpayers are not required to attach copies of documents with their petition, they may wish to consider whether they can obtain additional records or documents. These are some of the many circumstances taxpayers might encounter in preparing a petition and are reasons why they could use more than 30 days to complete it.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the BOE, upon unanimous consent of all Members of the BOE, for purposes of extending the deadline for filing a petition for redetermination from 30 days to 60 days from the date the notice of determination or notice of deficiency assessment is issued. For some taxpayers, current law does not allow ample time to develop and prepare their petitions. Allowing for a longer period to file a petition will enable taxpayers to better clarify and substantiate their position. In addition, the 60-day period is consistent with the filing period utilized by the Franchise Tax Board (FTB). To the extent that the time frame for protesting an amount due is the same between the two major tax agencies, the less confusion there might be where someone could think that they have 60 days to protest a BOE audit because that was the amount of time they had the last time they had an FTB audit, and they fail to carefully read the BOE notice.
- 2. The June 7, 2012 amendments** add Assemblywoman Harkey as a coauthor.
- 3. The additional days would allow taxpayers more time to consider their options.** As previously stated, taxpayers are informed of the 30-day period to file a timely petition at various steps during the audit process. However, due to a number of circumstances, taxpayers may be delayed in getting started. Perhaps the person responsible for preparing the petition may be away on a vacation or business trip or out sick. Further, due to the current economic crisis, many taxpayers have been forced to lay off employees. Consequently, the remaining employees may have to perform additional duties. A taxpayer's bookkeeper who prepares the returns may also have to answer telephones or process sales orders, which could result in him or her having less time to work on the petition. For small businesses with only a few employees, a 30-day period may not allow sufficient time to file a petition.

In addition, when preparing their petition, taxpayers also may wish to research applicable statutes, regulations, and audit procedures. Some taxpayers may wish to consult a tax professional. Should a taxpayer decide to use a tax professional, they will need to give them sufficient lead time to meet the 30-day deadline. These are some of the reasons why taxpayers could use more than 30 days to file.

4. **Provisions would conform to the FTB's deadline for filing a protest.** Current state income tax law, under Revenue and Taxation Code 19041, provides that, within 60 days after the mailing of each notice of proposed assessment, a taxpayer may file with the FTB a written protest against the proposed deficiency assessment, specifying in the protest the grounds upon which it is based. If a taxpayer disagrees with a notice of proposed assessment, they can file a protest within 60 days of the date shown on the notice. This bill conforms to the FTB's appeal process by allowing 60 days to protest a liability.
5. **Other states.** Based on a survey of other states, we find that several states allow more than 30 days for filing a petition of sales and use taxes. Arizona has a 45-day deadline. States with a 60-day deadline include Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Vermont, West Virginia, and Wisconsin. States with a 90-day deadline include New Jersey, New York, Pennsylvania, South Carolina, and Virginia.

COST ESTIMATE

The BOE would incur minor (\$50,000 or less) costs for programming and revising applicable publications.

REVENUE ESTIMATE

While a precise revenue impact is indeterminable, this bill would result in the following revenue effects:

- To the extent that taxpayers choose to pay their tax or fee liability on the 60th day from the date the determination (billing) was issued, this will result in the accrual of an additional month of interest. This potentially would result in a revenue gain to the state. However, BOE staff does not know the number of taxpayers that will wait and pay their liability on day 60. Some taxpayers choose to pay all or a portion of the liability before receiving a billing from the BOE (some taxpayers submit a payment upon receiving a copy of the audit report from the auditor). Currently, under the sales and use tax program, approximately 41 percent of taxpayers pay their liability in full by the 30th day. Other taxpayers enter into installment payment agreements. For these reasons, BOE staff cannot determine the number of taxpayers that may accrue an additional month of interest. Theoretically, extending the 30-day filing deadline to 60 days would result in additional debit interest being paid by taxpayers which would result in a revenue gain.
- Conversely, this measure would also extend the time period for which BOE staff could collect amounts for determinations by an additional 30 days. Historically, delaying collection activity can negatively impact the BOE's ability to collect all or part of the tax, and therefore, delaying collection activity could result in a revenue loss.
- The state may be delayed in receiving payments of liabilities until the 60th day. This could result in an unknown, potentially negative impact to the state's cash-flow situation.

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- The bill prevents assessment of the finality penalty until the 60th day. Under current law, a 10 percent finality penalty automatically attaches to any unpaid tax or fee liability on the 30th day. Extending the date a billing becomes final and due and payable would give all taxpayers until the 60th day to pay their liability. Theoretically, the state could see a revenue loss from less penalties being assessed.

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